



PROVINCE OF  
LOWER-CANADA. }

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*Court of Appeals,*

*Our Sovereign Lord the KING,*  
*(Intervening party in the Court below,)*  
**APPELLANT,**

**ROBERT FROSTE,**  
*(Plaintiff below,)*  
**RESPONDENT,**

**WILLIAM LINDSAY,**  
*(Defendant below.)*

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**CASE ON THE PART OF THE APPELLANT.**

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**T**HIS was an action of revendication brought in the Court of King's Bench at Montreal, in April Term, 1815, to recover twelve bales or packages of Flannels and one bale of superfine Cloth from the defendant William Lindsay.

To this action the defendant pleaded three pleas, which in substance, were as follows :

1st. The general issue.

2dly. That on 17th December, 1814, His Majesty being at war with the United States of America, the Flannels and Cloth in the declaration mentioned, at the Parish of St. Luke, in the District of Montreal, were seized as lawful prize to His Majesty, by the said defendant, (being then and still Collector of His Majesty's Customs at the Port of St. John,) for that the said Flannels and Cloth at the time of seizing them were the property and in possession of certain persons unknown, subjects of His Majesty, who, contrary to their allegiance, were adhering to and trading with the King's enemies; and were employed in conveying the said Flannels and Cloth from the said Province of Lower-Canada into the said United States, for the purpose of trade with the King's enemies and of affording them assistance and support; whereby the said Flannels and Cloth became forfeited to the King as lawful prize, and as such remained in the possession of the said defendant.

3dly. That the goods were seized by Minard Harris, land-waiter at the Port of St. John, together with a party of soldiers in His Majesty's service, for the same cause as was alleged in the second plea.

The plaintiff, by his replication, joined issue upon the three pleas.

An intervention was afterwards filed on the part of the Crown, by David Ross, Esquire, His Majesty's Counsel at Montreal. The reason alleged for this intervention was, in substance, "That His Majesty being at open war with the United States, no subject of the King, an inhabitant of this Province, had a right to export any articles, whereby His Majesty's enemies could be assisted or receive succour. That flannels, and every kind of woollen cloths were prohibited to be exported from this Province into the United States. That the Plaintiff, in defiance of the common Law of the land, and contrary to his allegiance to His Majesty, did on or about the 20th day of December, 1814, illegally, by circuitous roads and paths convey, and cause to be conveyed, to the Southward and beyond the port of St. John, and towards the lines between this Province and the said United States, twelve bales or packages of flannels marked D R E and numbered respectively from 1 to 12; and one bale of superfine cloths marked D R E 49: divided into two trusses marked D R L and numbered respectively 1 and 2: with intent to trade, export, or convey the same into the United States, and thereby to aid and succour the Government and people of the said States, then being the open enemies of His Majesty, contrary to the Laws, Statutes and regulations in this behalf made and provided. That by reason of the premises the said bales and packages were liable to be seized and forfeited. That on the said 20th of December, 1814, at St. John in the District of Montreal, the said bales and packages were by the said William Lindsay, (then and still being Collector of His Majesty's Customs at the Port of St. John,) seized as good and lawful prize." The intervention then stated the ground of seizure as in the defendant's pleas of justification; and concluded by praying "that the said bales and packages might, for the reasons aforesaid, be adjudged good and lawful prize, and forfeited; and might be ordered to be delivered to His Majesty; or that the value thereof might be adjudged to be paid by the plaintiff to His Majesty, and that the plaintiff might be condemned to pay all the costs and expences of the suit and intervention."

The Plaintiff pleaded the general issue to this intervention.

There was no doubt as to the goods being the property of the plaintiff, the only question was, whether they were about to be employed in that specie of illegal traffic, which subjected them to forfeiture.

The following is the substance of the evidence on the part of the Plaintiff.

*Alexander Robertson*, the Plaintiff's Clerk, stated that the Plaintiff received the Goods in question from England, in November 1814; that on the 19th of December following, the Plaintiff directed the witness to convey them to Laprairie, and to deliver them there to one Daniel W. Eager; that on his arrival at Laprairie he heard that Eager was at Missisqui Bay, towards which place he proceeded, without entering the goods at St. John's; that on the 20th of December the goods were seized about half a mile beyond St. John's, by a Serjeant and a party of Soldiers and delivered over to the Custom House at St. John; that he had no intention to carry the goods to the United States, nor was he aware that he was infringing the Law in passing St. John's without entering the goods there, and that he had received no orders from the Plaintiff to that effect.

*John Partlow* stated that he was hired by Robertson, the last witness, to take a load, consisting of bales of goods, from Laprairie to Missisqui Bay, about the 20th of December, 1814; that he accordingly left Laprairie about noon, in company with one David Nutt, who had been hired for the



the same purpose, and several others; that they proceeded in the common road leading from Laprairie to St. John's, 'till they arrived at Savanne, where Robertson directed them to turn off into the road leading through L'Acadie, which they accordingly did, and reached the road on the bank of the River Richelieu, about two miles and a half above St. John's, and one mile and a half below the Red House, where they arrived at eleven o'clock at night, and found a guard of soldiers, who obliged them to return to St. John's; that the road through L'Acadie was better than that by St. John's, and that he did not believe that Robertson had any intention of conveying the goods over the Lines.

Being cross examined on the part of the Crown, he said that the distance from Laprairie to St. John, was 18 miles; that it might take about five hours to go that distance with a loaded sleigh, and that it took them three hours to go from Laprairie to the half-way-house, where they turned off; that he was directed to leave the goods at Mr. Lester's Store, at Missisqui Bay; that Mr. Lester's Store was about four miles from the lines, and that it was very easy to take goods from Missisqui Bay over the lines, when people dared go over.

*Timothy Wheeler* was also hired by Robertson, and left Laprairie before Partlow, and waited for him at the half-way-house. The rest of his evidence in chief was, in substance, the same as Partlow's. On his cross examination, he said that it was not usual for those who employed him to cart goods, to explain their intentions respecting them, *particularly if they had any evil intentions.*

*David Nutt* deposed to the same effect, and added that they stopped twice between the half-way house and the Red house, but remained in the road, and did not go into any house; and that the American line joins Missisqui Bay.

*Edward Cooper* identified the goods as being the plaintiff's property, and proved their value, and stated that he was in the habit of carrying goods from Laprairie to his store at Missisqui Bay for retail sale, without any molestation or difficulty. On his cross-examination, however, he stated that he always took out his goods by going to Laprairie and from thence through the Port of St. John's, where he always got permits from the Custom-House Officer, (the defendant) to authorize him to take out his goods, particularly flannels and woollens; that he did not know a road which came out on the river Richelieu about three miles above St. John's; that the common road led through St. John's.

On his re-examination, he said he knew Andrew Barns and David N. Ogden, who carried on trade at Missisqui Bay, and who he believed, obtained all or the chief part of their goods from the plaintiff.

It is to be observed that neither Eager, to whom the goods were stated to be consigned, nor Lester to whose store they were to be conveyed, nor Barns nor Ogden, were called on the part of the plaintiff.

In support of the intervention on the part of the Crown, the following evidence was adduced:

*Christopher Aren*, Serjeant in the De Meuron Regiment, stated that on the 20th of December, 1814, being quartered at St. John's, he was ordered to take a detachment of men to the Red house, about two leagues above the port of St. John's, information having been given that ten sleighs, laden with contraband goods were on their way from this Province to the United States, and to seize and bring them to St. John's; that he went accordingly with a Corporal and six men; that towards ten o'clock in the evening, he saw a number of sleighs approaching, laden with bales of flannel and cloth; that upon going out, he heard one of the drivers exclaim "God damn it, there is a guard here!" that on his stopping the sleighs, which were to the number of 23 with about 30 men, a gentleman in a light sleigh came up very quick, and said that he had a good pass, to which the witness replied

*Theobald Schriever*, corporal in the De Meuron, deposed to the same effect as the last witness, and stated further, that the gentleman alluded to in the last deposition, wished the soldiers to drink with him, and was very significantly rattling money in his pocket while in conversation with the Serjeant.

*Samuel Gelston* was called by the Plaintiff to speak to the value of the goods.

The Court of King's Bench, after hearing the parties, gave judgment on the 20th June, 1817, in favour of the Plaintiff's action, but without costs, there being probable ground for seizure, and dismissed the intervention; to reverse which judgment, the present appeal has been brought on the part of the Crown.

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